

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 03/12/2020

TIME: 08:20:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco

CLERK: Miriam Hernandez

REPORTER/ERM: Laura Frost

CASE NO: **56-2018-00511366-CU-PO-VTA**

CASE TITLE: **Nava Chavez vs Mountain View Properties**

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion for Summary Judgment and/or Adjudication

MOVING PARTY: Westside Building Material Corporation

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 11/27/2019

EVENT TYPE: Motion for Summary Adjudication

MOVING PARTY: Eduardo Nava Chavez, Isabela Nava, The Estate of Eduardo Nava Chavez, Sheila Nava, Omero Nava Chavez, Maria Elena Nava the Administratrix of the Estate of Eduardo Nava Chavez

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Adjudication Memorandum of Points and Authorities, 10/25/2019

APPEARANCES

Arezou Khonsari, counsel, present for Defendant(s).

Douglas Lackey, counsel, present for Defendant BVC Development.

Phillip M. Hayes, counsel, present for Cross-Defendant Wall Constructors.

R. Timothy O'Connor, counsel, present for Plaintiff(s).

At 09:10 a.m., court convenes in this matter with all parties present as previously indicated.

Motion for Summary Judgment and/or Adjudication (Westside Building)

Counsel have received and read the court's written tentative ruling.

Matter submitted to the Court with argument.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

Request for Judicial Notice

The Court GRANTS Westside's unopposed request for judicial notice of declarations which have been filed in this action. (Evid. Code, § 452, subd. (d).)

Evidentiary Objections

The Court SUSTAINS the following objections made by plaintiffs': (1) Ayala declaration: numbers 10-11; (2) Dabbour declaration: numbers 5 (only as to statement, ". . . where he would check the

progress of the work and the crew"),14 (only as to statement, ". . . was clearly visible . . . to Wall Constructors' superintendent"), and 15-17; and (3) Ibarra declaration: number 11.

The Court OVERRULES each and every one of the remaining objections made by plaintiffs, each of which the Court has considered and finds to be without merit.

Undisputed Material Facts ("UMF"s)

For the purposes of ruling on this motion only, the Court makes the following findings:

The Court finds the following UMFs are established by the supporting evidence and undisputed: 9, and 25-29.

The Court finds the following UMFs are established by the supporting evidence, are purportedly disputed, but are genuinely undisputed: 1-8, 10-17, 24.

The Court finds the following UMFs are established by the supporting evidence, but are disputed: 18-22.

The Court finds the following UMFs are not established by the supporting evidence: 11 and 23.

Legal Principles Governing Summary Judgment/Adjudication

Summary judgment procedure is well settled: "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code of Civ. Proc., § 437c, subd. (a).) A party may also move for "summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty. . . ." (Code of Civ. Proc., § 437c, subd. (f)(1).) "The court must grant the motion if all the papers submitted show that there is no triable issue as to any material fact [citation omitted]-that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law [citations omitted]-and that the moving party is entitled to a judgment as a matter of law [citation omitted]." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855-56, 107 Cal.Rptr.2d 841, 24 P.3d 493, internal quotation marks omitted ("*Aguilar*").) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Id.*, 25 Cal.4th at p. 855, 107 Cal.Rptr.2d 841, 24 P.3d 493.) The court must construe the evidentiary showing, and all reasonable inferences therefrom, in the light most favorable to the opposing party. (*Id.*, 25 Cal.4th at p. 857, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

The Court follows a three part test in ruling on the motion:

(a) "First, . . . the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Id.*, 25 Cal.4th at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

(b) "Second, . . . the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Ibid.*)

(c) "Third, . . . how the parties moving for and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial." (*Id.*, 25 Cal.4th at p. 851, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

Ruling on Motion

The Court GRANTS Westside's motion for summary judgment. The Court finds that Westside met its initial burden of production and persuasion that Westside's role in this incident was simply as the drywall supplier who delivered product to the work site at the direction of the general contractor and the drywall subcontractor. Westside lacked any ownership, possession, or control over the worksite or the allegedly dangerous condition (obstruction of guardrail adjacent to elevator shaft). Westside's last delivery of drywall to the worksite was in March, 2017. The accident occurred in April 2017. The undisputed facts establish as a matter of law that Westside did not have a legal duty making it liable in negligence to plaintiffs because its work had been completed and accepted well before, and it had no ownership, possession or control of the worksite on, the date of the accident. (See *Sanchez v. Swinerton & Walberg Co.* (1996) 47 Cal.App.4th 1461, 55 Cal.Rptr.2d 415; *Hogan v. Miller* (1957) 153 Cal.App.2d 107, 314 P.2d 230.) This question of duty is resolved as a matter of law.

The burden shifted to plaintiffs to present a material factual dispute concerning application of the completed work doctrine on the legal question of duty. Plaintiffs have failed to do so. Westside is entitled to summary judgment as a matter of law. The Court awards costs of suit to Westside in an amount to be determined by the timely service and filing of a cost memorandum in conformity with the Code of Civil Procedure and the California Rules of Court.

Counsel for Westside shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court.

Motion for Summary Judgment (Plaintiff Chavez)

Matter submitted to the Court with argument.

The Court finds/orders:

The Court takes plaintiff's motion for summary judgment under submission as of 03/12/2020.